SUPREME COURT OF THE UNITED STATES.

No. 182.

CHARLES HOMER AND RICHARD T. SPRAGUE, PLAINTIFFS,

vs.

ARTHUR W. AUSTIN.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 182.

CHARLES HOMER AND RICHARD T. SPRAGUE, PLAINTIFFS,

vs.

ARTHUR W. AUSTIN.

On a certificate of division in opinion between the judges of the circuit court of the United States for the district of Massachusetts.

UNITED STATES OF AMERICA,
Massachusetts district:

At a circuit court of the United States, begun and held at Boston, within and for the district of Massachusetts, on the fifteenth day of October, anno Domini eighteen hundred and sixty-one—

Present: The honorable Nathan Clifford and Peleg Sprague, esquires.

CHARLES HOMER and RICHARD T. SPRAGUE
vs.
ARTHUR W. AUSTIN.

The writ in this case was dated January twentieth, eighteen hundred and fifty-nine, and was returnable to said circuit court at the May term, eighteen hundred and fifty-nine. It was brought against the defendant, as collector of the customs of the revenue district of Boston and Charlestown, to recover duties alleged by the plaintiffs to have been illegally imposed upon them, and paid by them under protest, upon certain almonds which they had imported into said district.

The declaration was assumpsit for money had and received by defendant to plaintiff's use, to which the defendant pleaded the general issue.

The cause came on for trial at this October term of the court, and the following facts appeared:

The almonds imported were, "100 bags of soft-shelled Languedor almonds," entered December 21st, 1858, and "33 barrels almond kernels," entered on the same day. The collector decided that the

duty on these almonds was 30 per cent. ; and the duty was paid on the 21st day of December, under written protest ; and on the 6th day of January, 1859, notice in writing of dissatisfaction with said decision was duly given to the collector, and in said notice the plaintiffs' grounds of objection thereto were distinctly and specifically set forth. On the same day an appeal was made to the Secretary of the Treasury, who, on the tenth day of said January, decided against the appeal.

The following questions occurred in the course of said trial :

1st. Whether by law these almonds were subject to a duty of 30 per cent. or not.

2d. Whether by law these almonds were subject to a duty of 8 per cent. or not.

3rd. Whether evidence should be admitted to prove that before and at the time of the passing of the tariff act of 1857, almonds were fruit, green, ripe, or dried, according to the commercial understanding of these terms in the markets of this country.

4th. Whether it should be left to the jury to determine whether almonds were fruit, green, ripe, or dried, according to the commercial understanding of these terms in our own markets when the tariff act of 1857, ch. 98, was passed.

On these questions the opinions of the judges were opposed, (to wit, Nov'r 15, 1861.)

Whereupon, on motion of the plaintiffs, by their counsel, that the points on which disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided.

It is ordered that the foregoing statement, which is made under the direction of the judges, be certified according to the request of the plaintiffs by their counsel, and the law in that case made and provided.

In testimony whereof, I, Henry W. Fuller, clerk of said circuit court of the United States, have hereunto set my hand and [SEAL.] the seal of this court, at Boston, this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-two.

H. W. FULLER, *Clerk.*

Filed Dec. 5, 1862.